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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,969	11/01/2001	Bob J. Dull	55261	3444

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EXAMINER

PRATT, HELEN F

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/002,969

Applicant(s)

DULL, BOB J.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 6-8, 10, 11, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond (5,512,307) or Delrue et al. 6,610,349.

Hammond '307 discloses a process of adding water to rice bran, adding a base to a pH of 9.15 and then separating the bran by using a microfilter (col. 10, lines 1-15 and col. 7, lines 5-20). The bran is dried as in claim 3 (col. 4, lines 30-35). Delrue et al. '349 disclose a process of heating corn bran in water to a pH of 7 to 11 for 5 to 6 minutes (col. 5, lines 15-35 and col. 6, lines 9-34). No patentable distinction is seen in heating the bran and water and then adding the base and in adding the base to the bran and then adding the water at this time absent a showing of anything new or unobvious. Claims 1, 3 and 6 differ from the reference in the step of heating the bran composition and in contacting the bran with a base for a particular length of time to saponify the fats in the bran. The bran was heated to from 20 C to 50 C (col. 3, lines 40-45). Nothing is seen that the bran composition would not have been contacted with a base for at least 0.1 minutes because it takes time to further process the bran as in passing it through the in-line mixer and then to a decanter centrifuge (col. 7, lines 14-20). Therefore, it

would have been obvious to heat the bran for particular lengths of time as shown by the references

Claim 4 further requires that the mixture have a pH of 10 and is treated for about 30 minutes. Delrue et al. '349 disclose the pH of about 10 in the use of a pH of about 9 to 11 (col. 5, lines 39-42). No particular time of treatment is disclosed as long as 30 minutes. However, the reference does disclose that the bran and water can be heated at much lower temperatures such as 135 to 167 F. which would require a longer treatment time than when higher temperatures are used (col. 6, lines 9-22). Nothing is seen at this time that the various treatment times of the reference to Delrue et al. '349 would not have made the claimed product. Therefore, it would have been obvious to treat a product for a particular time as shown above.

Claim 7 requires a particular ratio of bran to water, which is 1:5. Delrue et al. '349 disclose a ratio of water to bran of 1:1 (col. 6, lines 1-9). Hammond '307 discloses that the ratio of water to bran can be from 1:10 to 5:1: depending on how fast the enzymatic process is required to proceed (col. 3, lines 15-30). Therefore, it would have been obvious to choose the amount of water according to how fast the various chemical reactions are required to proceed.

Claims 8, 10 and 11 further require that the fatty acids found in the bran be converted to salts of fatty acids. The further limitations have been disclosed above. The process of the above references would have converted fatty acids to fatty acid salts because the required process has been shown above. Therefore, it would have been obvious to saponify fatty acids as disclosed above.

Claim 14 is to the composition. Nothing is seen at this time that the caloric fat value is not equal to that of the untreated bran because no fat has been removed, nor proteins removed in the processes shown above. Salts of fatty acids have been disclosed above because the bran has been treated with base material which makes salts of fatty acids. Claim 14 differs from the reference in that the caloric fat value is not positively known or whether the proteins are intact. However, since the claimed process has been shown above, it is seen that the caloric values of the fat would be the same as the untreated bran as the limitations of the claimed processes have been shown and no protein has been removed from the bran. Therefore, it would have been obvious to make a product as claimed.

Claims 2, 5, 9, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond '307 and Delrue et al. '349 as applied to claims 1, 3, 4, 6-8, 10, 11 above, and further in view of Tao (6,245,377).

Claims 2, 5, 9 and 12 further require adding acid to the bran to achieve a pH of from 5 to 8 as in claims 2, 9 and 12, and in claim 5 to a pH of 6.5. Tao discloses that it is known to stabilize rice bran by adding an edible acid in particular amounts, of from .10 to 2% (col. 2, lines 50-63). Even if the particular pH is not achieved, the function of providing stability to the rice bran by using acids with antioxidative properties is achieved. Nothing is seen that there is anything synergistic in adding a base and then an acid. The specification points out on page 4, lines 10-14 that the degree of acidification depends on the end use of the product. Therefore, it would have been

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obvious to stabilize rice using a two pronged approach of making salts of fatty acids as shown by Hammond and Delrue et al., and by using antioxidants as shown by Tao '377.

The further limitations as in claim 13 have been disclosed above and are obvious for those reasons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 11-13-03


HELEN PRATT
PRIMARY EXAMINER